

1 HONORABLE RICHARD A. JONES  
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10 UNITED STATES DISTRICT COURT  
11 WESTERN DISTRICT OF WASHINGTON  
12 AT SEATTLE

13 RAMON SAUL SILVA,

14 Plaintiff,

15 v.

16 TROY BACON, *et al.*,

Defendants.

Case No. 2:19-cv-00619-RAJ

ORDER ADOPTING MODIFIED  
REPORT AND  
RECOMMENDATION

17 The Court, having reviewed Plaintiff's and Defendants' objections to the Report  
18 and Recommendation ("Report") of Magistrate Judge Michelle L. Peterson (Dkt. ## 98,  
19 99), objections and responses thereto, and the remaining record, hereby finds and

20 **ORDERS:**

- 21 (1) In the Report, Judge Peterson determined that Defendants failed to  
22 "specifically address Plaintiff's request for scented oils in the First Amendment  
23 context." Dkt. # 96 at 19. In their objections to the Report, Defendants have  
24 since shown and persuaded the Court that there is indeed a legitimate  
25 penological interest in denying Plaintiff scented prayer oil. Dkt. # 99 at 2-4.  
26 To the extent that Judge Peterson "expresse[d] no opinion on Plaintiffs First  
27 Amendment claim as it pertains to scented oils," the Court now exercises its

28 ORDER – 1

1 discretion to consider new facts and argument and **MODIFIES** the Report.

2 See *United States v. Howell*, 231 F.3d 615, 621 (9th Cir. 2000). The Court  
3 holds that Defendants are entitled to summary judgment with respect to  
4 Plaintiff's First Amendment claim as it pertains to scented prayer oil.

5 (2) The Report (Dkt. # 96) as modified above is **ADOPTED**.

6 (3) Plaintiff's motions for partial summary judgment (Dkt. ## 39, 54) are  
7 **DENIED**.

8 (4) Defendants' motion for summary judgment (Dkt. # 73) is **GRANTED** with  
9 respect to all claims except for those pertaining to Plaintiff's request for  
10 scented prayer oil under the Religious Land Use and Institutionalized Persons  
11 Act ("RLUIPA").

12 (5) Plaintiff's amended complaint (Dkt. # 8) and this action are **DISMISSED with**  
13 **prejudice** with respect to all claims except those pertaining to Plaintiff's  
14 request for scented prayer oil under the RLUIPA.

15 (6) Defendants' motion for sanctions (Dkt. # 81) is **DENIED**, and Plaintiff's  
16 motion seeking a ruling on his dispositive motions (Dkt. # 90) is **DENIED as**  
17 **moot**.

18 (7) The Clerk is directed to send copies of this Order to Plaintiff, to counsel for  
19 Defendants, and to Judge Peterson.

20 DATED this 17th day of August, 2020.  
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25 The Honorable Richard A. Jones  
26 United States District Judge  
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